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Constitutional Consolidation and the Governance Bargain

Israel's Jewish Nationhood and Democratic Citizenship, 1948–2018

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In this issue *MCU Insights* the author asks why Israel moved from a largely implicit “governance bargain” between Jewish nationhood and democratic citizenship at state formation to a more explicit constitutional consolidation of Jewish collective status in the 2018 Nation-State Law (officially Basic Law: Israel as the Nation-State of the Jewish People), and what political trade-offs that shift generates.¹ He argues that the core dynamic is not a linear drift toward either liberal universalism or ethnonational exclusivity, but a recurring institutional problem of boundary management: Israel’s founding texts and early statecraft embedded both a civic promise of equality and a nation-state claim to represent the Jewish people. For decades, political leadership managed this tension through interpretive flexibility and pragmatic accommodation across domestic coalitions and diaspora relationships. Over time, however, judicial politics, demographic and party-system pressures, and the securitization of identity disputes increased the perceived costs of ambiguity, incentivizing constitutional consolidation. The 2018 Basic Law reduces interpretive discretion on the collective pole of the bargain. Still, it also raises the salience of equality and membership disputes by hardening symbolic hierarchy at the constitutional level, thereby reshaping domestic contestation and Israel–diaspora bargaining.²

Israel’s founding moment contained the tension in plain sight. In 1948, the Declaration of the Establishment of the State of Israel frames the state as the realization of Jewish self-determination while also promising social and political equality irrespective of religion, race, or sex. That dual commitment became a foundational reference point for later constitutional and political arguments, because it simultaneously legitimized a Jewish national project and established a civic baseline for democratic membership.³ Yet, Israel did not adopt a single entrenched constitution at independence; instead, it developed a Basic Law framework incrementally, leaving key identity questions to political practice, ordinary legislation, and later judicial interpretation.⁴ The result was a regime that could be described, in comparative terms, as stabilizing itself through managed ambiguity, where the system’s durability partly depended on keeping the boundary between collective nationhood and equal citizenship workable rather than definitively resolved.⁵

Early statecraft illustrates how that ambiguity was not accidental drift but an institutional method. David Ben-Gurion’s concept of “*mamlakhtiyut*” (statehood or sovereignty) is often presented as a stance of stateliness and state-building discipline. Still, it also functioned as a political logic for subordinating sectoral claims to an overarching state project while avoiding constitutional closure that might constrain future demographic and ideolog-

ical change. In this reading, resisting a constitution was not only about institutional infancy but also about preserving room to maneuver over who belonged, on what terms, and how the state related to Jews outside its borders. The governance bargain was therefore sustained less by doctrinal clarity than by a capacity to hold competing claims in the same political frame: sovereign citizenship for residents and a broader national vocation tied to global Jewish peoplehood.⁶

That same logic appears in Israel's early relationship with American Jewry. The 1950 Ben-Gurion–Blaustein Exchange is often treated as a pragmatic compromise to secure diaspora support.⁷ Still, scholarship emphasizes that it also reflected Ben-Gurion's ideological attempt to define a viable relationship between Israel as a sovereign democratic state and Israel as a "Jewish State" in a transnational sense.⁸ The core problem was the dual-loyalty anxiety: if Israel claimed to speak politically for Jews worldwide, it risked undermining diaspora civic belonging; if it renounced transnational peoplehood, it risked weakening a key pillar of Zionist state identity. The Ben-Gurion–Blaustein Exchange can thus be read as a mechanism of boundary management: Israel sought diaspora solidarity and material support while signaling limits on political representation claims that could destabilize diaspora citizenship. This was not a solved problem but a negotiated equilibrium that depended on mutual restraint and shared strategic interest.⁹

The membership problem did not stop at diaspora politics; it returned inside Israel through immigration, conversion, and competing definitions of Jewishness. One reason the governance bargain remained politically combustible is that Jewish nationhood is not only a cultural identity claim but also a set of gatekeeping decisions embedded in state institutions. Netanel Fisher and Avi Shilon's account of Israel's "ethnic–civic" nationhood highlights how Israeli policy and political argument have repeatedly tried to combine an ethnic conception of Jewish collectivity with civic and cultural pathways that allow partial inclusion of non-Jewish immigrants and the non-halachic relatives of Jews, even while keeping Jewish national status privileged. This framework helps explain why "Who is a Jew" disputes, conversion politics, and the Law of Return become recurring stress tests: they force the state to translate a peoplehood narrative into administrative categories, which then become objects of coalition struggle, litigation, and diaspora friction.¹⁰ Stern's analysis of identity crisis complements this by showing that conversion and recognition disputes are not merely narrow religious issues but points where internal Jewish pluralism and

Israel–diaspora relations collide, especially given the differing standards of recognition among orthodox, conservative, and reform communities.¹¹

A major scholarly approach to Israel's regime type frames these dynamics through the lens of "ethnic democracy." Sammy Smooha's model argues that a state can maintain democratic procedures and citizenship while institutionalizing dominance of a majority ethnonational group through symbols, immigration rules, and differential access to collective rights. The value of this concept for an analytic article is not that it settles normative debates, but that it specifies mechanisms: how collective national dominance can coexist with electoral competition, civil liberties, and partial minority inclusion, and where the friction points predictably emerge.¹² Yoav Peled's discussion of "ethnic democracy" versus "ethnocracy" underscores that scholars disagree about where Israel sits on that spectrum and about how occupation and territorial control affect regime classification, but the shared analytic payoff is that identity law and citizenship rules are treated as structural features of regime maintenance rather than only ideological rhetoric.¹³ Taken together, these perspectives clarify why constitutional debates in Israel are so intense: they are struggles over the formalization of dominance, equality, and membership boundaries, not only over policy details.

Within Israel's Basic Law system, this tension became increasingly "juridified." Tamar Hostovsky Brandes shows that Israel's constitutional development is inseparable from political bargaining over the meaning of "Jewish and democratic," especially as Basic Laws and judicial review have created a forum in which identity commitments can be interpreted as constitutional principles.¹⁴ As the court's role and liberal rights discourse became more salient, political actors who prioritized the Jewish collective pole of the governance bargain faced an incentive problem: if the constitutional baseline appeared to drift toward individual equality claims without a parallel anchoring of collective nationhood, then ordinary political victories might not endure in the face of constitutional interpretation.¹⁵ In this sense, the push toward the 2018 Nation-State Law can be understood as an attempt to correct what its proponents saw as a constitutional imbalance, not simply as symbolic politics. That causal claim does not require endorsing the law's content; it identifies the institutional motive: to reduce uncertainty about how the regime's core identity is read at the constitutional level.

The 2018 Basic Law achieves constitutional consolidation by entrenching the collective dimension of Jewish nationhood in the form of a Basic Law. It elevates Jewish self-determination

in the state to a constitutional principle. It provides interpretive signals regarding symbols, language, and national development, intended to be read as foundational rather than programmatic.¹⁶ A central analytic point is that constitutional consolidation is not only about what the text says, but about what it does to the bargaining environment. By moving contested identity propositions from ordinary legislation into a Basic Law, the state changes the default in constitutional politics: courts, legislators, and civil society must now argue against an explicit constitutional statement rather than within an ambiguous founding compromise. Hostovsky Brandes's discussion of the law's implications for equality and identity politics captures this institutional consequence: constitutional clarity on nationhood can impose political and legal costs when it is not paired with equally explicit constitutional guarantees of civic equality, because disputes that were previously managed through practice and interpretation become disputes over constitutional hierarchy.¹⁷

The timing of this consolidation is also illuminated by scholarship on contemporary Israeli politics, especially the use of Jewish identity as a mobilizing marker within competitive party systems. Guy Ben Porat and Dani Filc argue that Jewishness has increasingly been politicized not only as a boundary between Jews and non-Jews but also as a boundary within the Jewish majority between "authentic" Jews and allegedly detached elites, a pattern that aligns with broader dynamics of exclusionary populism.¹⁸ Yedidia Z. Stern's account of a fraying consensual framework similarly suggests that institutional and cultural mechanisms that once dampened confrontation have weakened, increasing the likelihood that identity disputes become zero-sum struggles over the state's character.¹⁹ Ronni Olesker's securitization analysis adds another mechanism: when identity is framed as security-relevant, ordinary political disagreement becomes existential, raising the incentive to constitutionalize identity positions to lock in outcomes.²⁰ Taken together, these accounts point to a political environment in which ambiguity becomes harder to sustain because polarization increases the perceived risk of interpretive drift.

The key trade-off is that consolidation can stabilize one dimension of the governance bargain while destabilizing others by making hierarchy and exclusion more visible and contestable. On one hand, proponents plausibly see consolidation as regime clarification: a constitutional statement that Israel is the nation-state of the Jewish people provides coherence to immigration preferences, national symbols, and collective aspirations, especially in a state born from a national movement

and facing persistent external contestation. On the other hand, by constitutionalizing the collective pole without an equally explicit constitutional restatement of civic equality, the law amplifies the salience of minority-status claims and fuels disputes about whether democratic citizenship is substantively equal or only formally equal.²¹ This is where ethnic-democracy theory becomes analytically useful: the model predicts that the sharper the institutionalization of majority dominance, the more politics will concentrate around the limits of minority inclusion, the meaning of equality in practice, and the legitimacy of differential collective rights.²²

Diaspora politics reenters here because Israel's identity institutions are not purely domestic. Hostovsky Brandes argues that the Nation-State Law became a flashpoint in Israel-diaspora relations by intensifying longstanding disputes over pluralism, recognition, and the balance between Jewish peoplehood and democratic-liberal commitments, especially because the law frames Israel's foundational constituency in expansive terms of peoplehood.²³ Stern's discussion of conversion and denominational recognition helps specify why: if major segments of American Jewry experience Israeli legal standards as delegitimizing their Jewish identity, then constitutional consolidation that foregrounds Jewish collective nationhood can paradoxically widen the political distance between Israel and key diaspora constituencies, even when those constituencies are broadly supportive of Israel's security and existence.²⁴ In analytic terms, the Ben-Gurion-Blaustein equilibrium was a negotiated boundary between Israel's transnational vocation and diaspora civic security; constitutional consolidation increases the transaction costs of that equilibrium because it provides new constitutional language around which both supporters and critics can coordinate their claims.²⁵

In sum, Israel's constitutional identity trajectory from 1948 to 2018 can be analyzed as a shift from governance through managed ambiguity to governance through constitutional consolidation. The earlier equilibrium depended on interpretive flexibility: leaders could invoke the Jewish national project and civic equality simultaneously while adapting institutional practice to coalition constraints and diaspora relationships. Over time, the interaction among constitutional development, judicial politics, polarized party competition, and the securitization of identity disputes increased the perceived costs of that flexibility, creating incentives to entrench the collective nationhood claim in the form of Basic Law.²⁶ The trade-off is structural: consolidation can reduce uncertainty about the Jewish-national pole

of the bargain, but it simultaneously increases the salience of disputes over equality, membership, and pluralism by relocating them to the constitutional level and by changing how domestic and diaspora actors bargain over Israel's identity. The analytic payoff is not a moral verdict on the law, but a clearer account of the mechanisms that link constitutional design to political conflict in a state where nationhood, religion, and citizenship are institutionally fused rather than neatly separable.²⁷

Looking ahead, this fusion is likely to remain a central axis of political competition because Jewishness is increasingly mobilized as a boundary marker not only between Jews and non-Jews but also within the Jewish majority.²⁸ Where identity disputes are securitized and processed through Basic Law politics and judicial review, the governance bargain is likely to remain high-salience and recurrently contested, raising the political costs of compromise over recognition, membership, and equality claims.²⁹

ENDNOTES

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